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Attorneys for Court-Appointed Receiver R. Wayne Klein

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>NATIONAL NOTE OF UTAH, LC, a Utah Limited Liability Company and WAYNE LaMAR PALMER, and individual,</p> <p style="text-align: right;">Defendants.</p>	<p>RECEIVER’S MOTION SEEKING AUTHORIZATION TO SELL ALMOND HEIGHTS LOTS 7, 11, 12, 13, 17 & 26 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT</p> <p>2:12-cv-00591 BSJ</p> <p>The Honorable Bruce S. Jenkins</p>
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R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of National Note of Utah, LC, its subsidiaries and affiliates, and the assets of Wayne LaMar Palmer, by and through his counsel of record, hereby files this motion (the “Motion”), and respectfully requests that the Court authorize him to sell certain real property of the Receivership Estate, described more fully and defined in the Memorandum in Support as “Almond Heights Lots 7, 11, 12, 13, 17 & 26” subject to higher and better offers.

This Motion is supported by the Declaration of Receiver R. Wayne Klein (the “Receiver Declaration”), which has been filed concurrently herewith. A proposed Order is submitted herewith and attached hereto as Exhibit A.

MEMORANDUM IN SUPPORT

I.

FACTUAL BACKGROUND

1. On June 25, 2011, the above-captioned case was commenced by the Securities and Exchange Commission (the “SEC”) against Defendants National Note of Utah, LC (“NNU”) and Palmer (collectively, the “Receivership Defendants”), and in conjunction therewith the Court entered, in relevant part, an Order Appointing Receiver and Staying Litigation (the “Receivership Order”).¹ Pursuant to the Receivership Order, the Receiver was appointed, and NNU, forty-one of its affiliated companies (the “Palmer Entities”) (collectively for purposes of this Motion, “NNU”), and all Palmer’s assets were placed in the Receiver’s control.²

2. The Court has directed and authorized the Receiver to, among other things, do the following:

- “[D]etermine the nature, location and value of all property interests of the Receivership Defendants and the Palmer Entities . . . [.]”³
- “To take custody, control and possession of all Receivership Property and records . . . [.]”⁴

¹ Docket No. 9 (Receivership Order).

² See generally, *id.*

³ *Id.* at ¶ 7(A).

⁴ *Id.* at ¶ 7(B).

- “To use Receivership Property for the benefit of the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court[.]”⁵
- “[T]o take immediate possession of all real property of the Receivership Defendants and the Palmer Entities”⁶
- “[T]ransfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on the terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.”⁷
- “[L]ocate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.”⁸
- “[S]ell, and transfer clear title to, all real property in the Receivership Estates” upon order of the Court “pursuant to procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004.”⁹

II.

REAL PROPERTY TO BE SOLD

Almond Heights Lots 7, 11, 12, 13, 17 & 26

3. Since his appointment, the Receiver has identified numerous real properties as

⁵ *Id.* at ¶ 7(D).

⁶ *Id.* at ¶ 19.

⁷ *Id.* at ¶ 37.

⁸ *Id.* at ¶ 38.

⁹ *Id.* at ¶ 39.

being part of the Receivership Estate, and where appropriate has listed such property for sale.¹⁰

4. Relevant to this Motion are six parcels of real property with the following addresses and accompanying legal descriptions:

- 230 West Peachtree Drive, Toquerville, UT 84774; T-AHP-A-7 (“Lot 7”);
- 715 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-11 (“Lot 11”);
- 725 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-12 (“Lot 12”);
- 735 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-13 (“Lot 13”);
- 775 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-17 (“Lot 17”);
- 845 South Peachtree Drive, Toquerville, UT 84774; T-AHP-A-26 (“Lot 26”).

These properties are part of the Almond Heights Park Subdivision, located in Toquerville, Utah (the “Almond Heights Properties”).¹¹

5. Almond Heights Lots 7, 11, 12, 13, 17, and 26 are titled in the name of NNU.¹²

Marketing Almond Heights Lots 7, 11, 12, 13, 17 & 26

6. On or about August 1, 2014, the Receiver caused all of the Almond Heights Properties, including Lots 7, 11, 12, 13, 17, & 26 to be listed for sale through Access Utah Realty (the “Realtor”).¹³ A copy of the Listing Agreement with addenda is attached as Exhibit G to the Receiver Declaration.

7. To determine an offering price and comply with his duties, the Receiver obtained

¹⁰ Receiver Declaration ¶ 4.

¹¹ *Id.* at ¶¶ 4-5 & Exhs. A-F (Title Reports).

¹² *Id.* ¶ 5 & Exhs. A-F (Title Reports).

¹³ *Id.* ¶ 6.

the opinion of his Realtor and one appraiser.¹⁴ The Court approved the use of the original appraiser and two additional appraisers on October 3, 2014.¹⁵ The Receiver has received the second appraisal and is awaiting the results of the third appraisal and will update the Court when it becomes available.¹⁶

8. The Receiver marketed Almond Heights Lots 7, 11, 12, 13, 17 & 26 for sale through his Realtor, including by listing the property on the Multiple Listing Service.¹⁷

Court-Appointed Appraisers

9. On October 3, 2014, the Court entered an *Order Granting Receiver's Ex Parte Motion Seeking Appointment of Appraisers for Almond Heights Lots*.¹⁸

10. Consequently, Craig Morley ("Morley"), Steven R. Williams ("Williams"), and Kelly J. Blake ("Blake") were appointed as appraisers for the Almond Heights Properties, including Lots 7, 11, 12, 13, 17 & 26.¹⁹ Morley and Williams have provided the Receiver appraisals of the Almond Heights Properties, including Lots 7, 11, 12, 13, 17 & 26 (the "Morley Appraisal" and the "Williams Appraisal"). True and correct copies of the portions of the Morley Appraisal and the Williams Appraisal that are relevant to Almond Heights Lots 7, 11, 12, 13, 17 & 26 are attached to the Receiver Declaration as Exhibit H and Exhibit I. Blake is in the

¹⁴ *Id.* ¶ 7.

¹⁵ Docket No. 780.

¹⁶ Receiver Declaration ¶ 7.

¹⁷ *Id.* ¶ 8.

¹⁸ Docket No. 780.

¹⁹ *Id.* at 1-2.

process of performing his appraisal on the Almond Heights Properties. The Receiver will update the Court when Blake has completed his appraisals and will provide the Court with those portions relevant to Almond Heights Lots 7, 11, 12, 13, 17 & 26 when it becomes available.²⁰

11. Morley and Williams appraised Almond Heights Lots 7, 11, 12, 13, 17 & 26 as follows²¹:

Lot	Morley Appraised Value	Williams Appraised Value	Average Appraised Value
7	\$40,000.00	\$35,000.00	\$37,500.00
11	\$39,000.00	\$30,000.00	\$34,500.00
12	\$40,000.00	\$30,000.00	\$35,000.00
13	\$39,000.00	\$30,000.00	\$34,500.00
17	\$32,000.00	\$28,000.00	\$30,000.00
26	\$36,000.00	\$32,000.00	\$34,000.00

The Purchase Agreements

12. Lot 7: On or about September 29, 2014, the Receiver entered into a purchase agreement for Lot 7 (the "Lot 7 Purchase Agreement") on behalf of the Receivership Estate with LST Holdings LLC (the "Lot 7 Buyer") for a purchase price of \$32,000.00 subject to Court approval. A copy of the Lot 7 Purchase Agreement is attached to the Receiver Declaration as Exhibit J. There are no real estate commissions required for the sale of Lot 7.²²

²⁰ Receiver Declaration ¶ 9.

²¹ *Id.* at Exhs. H & I (Morley Appraisal & Williams Appraisal).

²² *Id.* at ¶ 10.

13. Lot 11: On or about September 23, 2014, the Receiver entered into a purchase agreement for Lot 11 (the “Lot 11 Purchase Agreement”) on behalf of the Receivership Estate with Richard Lesko (the “Lot 11 Buyer”) for a purchase price of \$32,000.00 subject to Court approval. A copy of the Lot 11 Purchase Agreement is attached to the Receiver Declaration as Exhibit K.²³

14. Lot 12: On or about September 23, 2014, the Receiver entered into a purchase agreement for Lot 12 (the “Lot 12 Purchase Agreement”) on behalf of the Receivership Estate with Greg H. Goulding (the “Lot 12 Buyer”) for a purchase price of \$32,000.00. A copy of the Lot 12 Purchase Agreement is attached to the Receiver Declaration as Exhibit L.²⁴

15. Lot 13: On or about September 23, 2014, the Receiver entered into a purchase agreement for Lot 13 (the “Lot 13 Purchase Agreement”) on behalf of the Receivership Estate with Robbie L. Rodriques (the “Lot 13 Buyer”) for a purchase price of \$32,000.00. A copy of the Lot 13 Purchase Agreement is attached to the Receiver Declaration as Exhibit M.²⁵

16. Lot 17: On or about September 23, 2014, the Receiver entered into a purchase agreement for Lot 17 (the “Lot 17 Purchase Agreement”) on behalf of the Receivership Estate with Ken Shelton (the “Lot 17 Buyer”) for a purchase price of \$25,000.00. A copy of the Lot 17 Purchase Agreement is attached to the Receiver Declaration as Exhibit N.²⁶

17. Lot 26: On or about October 2, 2014, the Receiver entered into a purchase

²³ *Id.* at ¶ 11.

²⁴ *Id.* at ¶ 12.

²⁵ *Id.* at ¶ 13.

²⁶ *Id.* at ¶ 14.

agreement for Lot 26 (the “Lot 26 Purchase Agreement”) on behalf of the Receivership Estate with Stephanie Wall (the “Lot 26 Buyer”) for a purchase price of \$32,000.00. A copy of the Lot 26 Purchase Agreement is attached to the Receiver Declaration as Exhibit O.²⁷

18. If the Court approves the sale of Lots 7, 11, 12, 13, 17 & 26 pursuant to the terms of the respective purchase agreements, the Receiver anticipates paying at the time of closing of the sale outstanding property taxes and the ordinary costs of sale, including market-rate closing costs and a standard 7.00% realtor commission (other than on Lot 7 as there is no commission applicable to this Lot).²⁸

19. Any other financial interests against Lots 7, 11, 12, 13, 17 & 26, other than property taxes and the closing costs, will not be paid at the time of closing of the sale. Rather, any such interests (to the extent that they exist and without any waiver of the Receiver or the Receivership Estate’s rights and defenses related thereto) will survive the sale and will attach to the “Net Sale Proceeds,” defined as the gross sale proceeds minus costs paid at closing described above.²⁹

20. The Receiver will separately account for the Net Sale Proceeds pending resolution of any disputes related to interests that may exist against Almond Heights Lots 7, 11, 12, 13, 17 & 26.³⁰

²⁷ *Id.* at ¶ 15.

²⁸ *Id.* at ¶ 16.

²⁹ *Id.* at ¶ 17.

³⁰ *Id.* at ¶ 18.

Free and Clear Sale

21. The Receiver proposes to sell Almond Heights Lots 7, 11, 12, 13, 17 & 26 free and clear of all interests therein, with any interests that may exist attaching to the Net Sale Proceeds. In so doing, the Receiver is not in any way waiving any rights, claims, interests or defenses to any claims or interests made against the Almond Heights Lots or to the Net Sale Proceeds.³¹

22. To determine interests, if any against Almond Heights Lots 7, 11, 12, 13, 17 & 26, the Receiver obtained Title Reports for Lots 7, 11, 12, 13, 17 & 26. The Title Reports are attached to the Receiver Declaration as Exhibit A (Lot 7), Exhibit B (Lot 11), Exhibit C (Lot 12), Exhibit D, Lot 13, Exhibit E (Lot 17) & Exhibit F (Lot 26).³²

23. From the Title Reports, the Receiver determined that property taxes on Lots 7, 11, 12, 13, 17 & 26 for the years 2011 through 2013 are liens that are due and payable. Property taxes on Lots 7, 11, 12, 13, 17 & 26 for 2014 are liens that are not yet due.³³

24. From the Title Reports, the Receiver has identified one person/entity holding a purported interest, in the form of a deed of trust (the "Lot 11, 12 & 13 Trust Deed") against Lots 11, 12 & 13 and two other Almond Heights Properties (the "Lot 11, 12 & 13 Trust Deed Holder"). On October 1, 2014, however, the Court entered an Order approving a settlement agreement between the Lot 11, 12 & 13 Trust Deed Holder and the Receiver on behalf of the

³¹ *Id.* at ¶ 19.

³² *Id.* at ¶¶ 5 & 20, Exhs. A-F (Title Reports).

³³ *See Id.* at ¶ 21 & Exhs. A-F (Title Reports).

Receivership Estate (the “Settlement Agreement”).³⁴ Under the Settlement Agreement, the Receivership Estate will receive 25% of the net sales proceeds of Lots 11, 12 & 13 and the two other Almond Heights Properties and the Lot 11, 12 & 13 Trust Deed Holder will release the liens on Lots 11, 12 & 13 in exchange for 75% of the proceeds of the net sales of Lots 11, 12 & 13 and the other two Almond Heights Properties.³⁵

25. From the Title Reports, the Receiver has identified one person/entity holding a purported interest, in the form of a deed of trust against Lot 17 (the “Lot 17 Trust Deed Holder”). The Lot 17 Trust Deed Holder holds a \$30,000.00 trust deed (the “Lot 17 Trust Deed”) which also applies to five other Almond Heights Lots (which are not the subject of the present motion). The Receiver proposes holding the proceeds from the sale of Lot 17 in the Real Estate Holding Account pending the sale of the other lots covered by the Lot 17 Trust Deed.³⁶

26. From the Title Reports the Receiver has identified one person/entity holding a purported interest, in the form of a trust deed (the “Lot 26 Trust Deed”), against Lot 26 (the “Lot 26 Trust Deed Holder”). The Lot 26 Trust Deed Holder holds a trust deed (the “Lot 26 Trust Deed”) which also applies to three other Almond Heights Lots (which are not the subject of the present motion). The Receiver proposes holding the proceeds from the sale of Lot 26 in the Real Estate Holding Account pending the sale of the other lots covered by the Lot 26 Trust Deed.³⁷

27. The alleged interests in the Lots 7, 11, 12, 13, 17 & 26 are summarized below:

³⁴ Docket No. 777.

³⁵ *Id.* ¶ 22.

³⁶ *Id.* ¶ 23.

³⁷ *Id.* ¶ 24.

Lot	Encumbrances
7	Past Due Lien for 2011-13 Property Taxes Lien for 2014 Property Taxes that is not yet due
11	Lot 11, 12 & 13 Trust Deed Past Due Lien for 2011-13 Property Taxes Lien for 2014 Property Taxes that is not yet due
12	Lot 11, 12 & 13 Trust Deed Past Due Lien for 2011-13 Property Taxes Lien for 2014 Property Taxes that is not yet due
13	Lot 11, 12 & 13 Trust Deed Past Due Lien for 2011-13 Property Taxes Lien for 2014 Property Taxes that is not yet due
17	Lot 17 Trust Deed Past Due Lien for 2011-13 Property Taxes Lien for 2014 Property Taxes that is not yet due
26	Lot 26 Trust Deed Past Due Lien for 2011-13 Property Taxes Lien for 2014 Property Taxes that is not yet due

28. Any other financial interests against Lots 7, 11, 12, 13, 17 & 26, other than property taxes and closing costs, will not be paid at the time of closing of the sale. Rather, any such interests (to the extent they exist and without any waiver of the Receiver or the Receivership Estate's right and defenses related thereto) will survive the sale and will attach to the Net Sale Proceeds, defined as the gross sale proceeds minus the costs paid at closing

described above.³⁸ In addition, at the time of closing, 75% of net sales proceeds will be paid to the Lot 11, 12, and 13 Trust Deed Holder.

29. A copy of this Motion is being served on the relevant taxing authorities, and each of the respective Trust Deed Holders with alleged interests in Almond Heights Lots 11, 12, 13, 17 & 26.³⁹

Best Interests

30. The sales of Almond Heights Lots 7, 11, 12, 13, 17 & 26 as proposed are beneficial for and in the best interests of the Receivership Estate.⁴⁰

31. The proposed sales will result in cash based on the fair market value of Almond Heights Lots 7, 11, 12, 13, 17 & 26. The Morley Appraisal value, the Williams Appraisal value, the purchase price, and the percent of the average appraised value are listed below. The Receiver will update this chart with the appraised values from Blake, and the averages of the three appraisals when they become available.⁴¹

³⁸ *Id.* ¶ 26.

³⁹ *Id.* ¶ 29.

⁴⁰ *Id.* at ¶ 28.

⁴¹ *Id.* at ¶ 29 & Exhs. H & I (Morley Appraisal and Williams Appraisal).

Lot	Morley Appraised Value	Williams Appraised Value	Average Appraised Value	Purchase Price	Percent of Average Appraised Value
7	\$40,000.00	\$35,000.00	\$37,500.00	\$32,000.00	85.33%
11	\$39,000.00	\$30,000.00	\$34,500.00	\$32,000.00	92.75%
12	\$40,000.00	\$30,000.00	\$35,000.00	\$32,000.00	91.43%
13	\$39,000.00	\$30,000.00	\$34,500.00	\$32,000.00	92.75%
17	\$32,000.00	\$28,000.00	\$30,000.00	\$25,000.00	83.33%
26	\$36,000.00	\$32,000.00	\$34,000.00	\$32,000.00	94.12%

32. The sale of Almond Heights Lots 7, 11, 12, 13, 17 & 26 at this time will also slightly reduce the burden to the Receivership Estate by reducing the time spent by the Receiver in managing the property and, more importantly, will maximize the value of Almond Heights Lots 7, 11, 12, 13, 17 & 26 by ending tax and maintenance obligations associated with the property.⁴²

33. The sale to the Lot 7, 11, 12, 13, 17 & 26 Buyers proposed herein is subject to higher and better offers, after publication notice as provided for below.⁴³

Publication Notice

34. Contemporaneously herewith the Receiver is filing his *Ex Parte Motion for Order Approving Method and Form of Publication Notice of Sale of Real Property (Almond Heights*

⁴² *Id.* at ¶ 30.

⁴³ *Id.* at ¶ 31.

Lots 7, 11, 12, 13, 17 & 26) (the “Publication Motion”), seeking the Court’s approval of the method and form of proposed publication notice as required under 28 U.S.C. § 2001(b).⁴⁴

35. Upon entry of an Order granting the Publication Motion, the Receiver shall publish notice of the proposed sale in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, and the *St. George Spectrum*, a newspaper published in Washington County, Utah and distributed to Toquerville, Utah, using the method and form of notice approved by the Court.⁴⁵

36. In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing these proposed sales be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.⁴⁶

III.

ARGUMENT

Based on the facts above, the Receiver respectfully requests authorization to sell Almond Heights Lots 7, 11, 12, 13, 17 & 26 pursuant to the terms of the Purchase Agreements free and clear of liens and interests, with any such interests, to the extent that they exist, attaching to the Net Sale Proceeds and held by the Receiver pending resolution of any disputes related thereto. Sale of Almond Heights Lots 7, 11, 12, 13, 17 & 26 as proposed is within the scope of the

⁴⁴ *Id.* at ¶ 32.

⁴⁵ *Id.* at ¶ 33.

⁴⁶ *Id.* at ¶ 34.

Receiver's authority under the Receivership Order as quoted above and 28 U.S.C. § 2001(b), it is in the best interests of the Receivership Estate, and the sale serves the purposes of the receivership by providing a "realization of the true and proper value" of Almond Heights Lots 7, 11, 12, 13, 17 & 26.⁴⁷

Sale of Almond Heights Lots 7, 11, 12, 13, 17 & 26 as Proposed is Beneficial to the Receivership Estate

Section 2001(b) of title 28 of the United States Code provides that the Court may authorize the sale of real property through private sale if such sale is in the "best interests" of the Receivership Estate. Furthermore, the Receivership Order authorizes the Receiver, subject to Court approval, to sell property of the Receivership Estate "with due regard to the realization of the true and proper value of such Receivership Property."⁴⁸ Sale of Almond Heights Lots 7, 11, 12, 13, 17 & 26 as proposed herein is in the best interests of the Receivership Estate for several reasons, including at least the following.

First, the sale will result in cash for the Receivership Estate based on the fair market value of Almond Heights Lots 7, 11, 12, 13, 17 & 26. Based on the Morley Appraisal and the Williams Appraisal, Lots 7, 11, 12, 13, 17 & 26 will all be sold between 83.33% and 94.12% of the average appraised value. The Morley Appraisal and the Williams Appraisals have taken into consideration current market conditions, sales of comparable properties, and the particular nature of Lots 7, 11, 12, 13, 17 & 26.

Second, the sale of Almond Heights Lots 7, 11, 12, 13, 17 & 26 at this time as proposed

⁴⁷ Receivership Order ¶ 38.

⁴⁸ *Id.*

will reduce, albeit slightly, the burden on the Receivership Estate and maximize the value of the property. The Receiver will no longer have to spend time managing the property, and the Receivership Estate will no longer have obligations related to paying taxes on and other maintenance and upkeep expenses related to the property.⁴⁹ Accordingly, the Receiver requests that the Court approve this sale under the terms outlined herein.

Request to Sell Almond Heights Lots 7, 11, 12, 13, 17 & 26 Free and Clear of Interests

As discussed above, the Receiver proposes to sell Almond Heights Lots 7, 11, 12, 13, 17 & 26 free and clear of any interests in the property, with any such interest attaching to the Net Sale Proceeds. The Court may order such a sale so long as parties with interests against the property are given proper notice.

The Receiver will serve a copy of the Motion on the Lot 11, 12 & 13 Trust Deed Holder, the Lot 17 Trust Deed Holder, the Lot 26 Trust Deed Holder and the relevant taxing authorities.⁵⁰ Failure to object to these terms will mean that these trust deed holders consent to the relief sought herein, and may only look to the Net Sale Proceeds for any claim that he/she may eventually be held to have. This will allow for the proposed sale to close, and preserve the status quo as to any disputes as to any claimed interests in Almond Heights Lots 7, 11, 12, 13, 17 & 26.

Compliance With 28 U.S.C § 2001

The Receivership Order provides that the Court may require that the proposed sale of real

⁴⁹ *Id.* at ¶ 30.

⁵⁰ *Id.* at ¶ 30.

property satisfy 28 U.S.C. § 2001.⁵¹ Subsection (b) of § 2001 permits, with Court approval, a private sale of receivership property as proposed herein, but it conditions such sale on (1) obtaining a purchase price that is no less than two-thirds of the appraised value of the property; (2) appointing “three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities[;]” (3) publication notice of the sale “at least ten days before confirmation[;]” and (4) cancellation of the sale “if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.”⁵² Here, the Receiver has complied with each of these factors.

Specifically, factor (1) is met in this case inasmuch as the individual purchase prices for Lots 7, 11, 12, 13, 17 & 26 are all over 83.33% of the appraised value, and therefore far exceed the 2/3 requirement.

Factor (2) is met because the Receiver has obtained the Morley Appraisal and the Williams Appraisal and is awaiting the completion of an appraisal from Blake. By the time of a final hearing, the Receiver will have obtained appraisals from three experienced, third party appraisers who were appointed by this Court, will have provided the Court with the relevant portions of the Blake Appraisal, and will have submitted an updated chart to the Court showing the appraised values of the individual lots along with the average appraised values.

Factor (3) will be met as the Receiver will publish notice of the proposed sale immediately upon the Court’s entry of an Order approving the method and form of such notice as

⁵¹ Receivership Order ¶ 39.

⁵² 28 U.S.C. § 2001(b).

requested in the Publication Motion filed concurrently herewith.

Factor (4) also has been met, inasmuch as the Receiver understands that the sale will not be approved if he receives a higher and better offer that is in compliance with § 2001(b) as quoted above and the sale is conditioned on this factor.⁵³ In the event that the Receiver receives and accepts a higher and better offer, he proposes that this Motion and any Order authorizing this proposed sale be deemed to apply to the higher and better offeror without further notice or hearing inasmuch as the sale will be appropriate for the reasons set forth below. In such event, the Receiver will file a notice of sale disclosing the sale to the higher and better offeror.

CONCLUSION

For the foregoing reasons, the Receiver requests that the Court grant the Motion, thus authorizing the sale of Almond Heights Lots 7, 11, 12, 13, 17 & 26 pursuant to the respective purchase agreements or to a higher and better offeror free and clear of purported interests.

DATED this 3rd day of November, 2014.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Chris Martinez

Sarah Goldberg

Attorneys for Receiver

⁵³ Receiver Declaration ¶ 31.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL ALMOND HEIGHTS LOTS 7, 11, 12, 13, 17 & 26 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was filed with the Court on this 3rd day of November, 2014, and served via ECF on all parties who have requested notice in this case:

/s/ Sarah Goldberg

It is hereby certified that on the 3rd day of November, 2014, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL ALMOND HEIGHTS LOTS 7, 11, 12, 13, 17 & 26 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was served on the following parties by U.S. Mail postage prepaid:

Wayne L. Palmer
8816 South 2240 West
West Jordan, UT 84088

Arthur L. Partridge
Washington County Assessor
87 North 200 East, Ste. 201
St. George, UT 84770

/s/ Sarah Goldberg

It is hereby certified that on the 3rd day of November, 2014, the **RECEIVER'S MOTION SEEKING AUTHORIZATION TO SELL ALMOND HEIGHTS LOTS 7, 11, 12, 13, 17 & 26 FREE AND CLEAR OF PURPORTED INTERESTS SUBJECT TO HIGHER AND BETTER OFFERS AND MEMORANDUM IN SUPPORT** was served on the following individuals via email:

bstensland@comcast.net
kim@bestresource.com
kolson@realtytrust.com

/s/ Sarah Goldberg